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For a quarter-century, environmental protection in Massachusetts — and across the country — has been predicated on the belief that government can best regulate what goes into the air, water, and land by telling business and industry not only how much they must limit pollutants but also precisely how to do it. As wise and as effective as this command-and-control philosophy once may have been, a less costly and more protective approach is needed.

Now, in a bold move that is revolutionizing the way we protect human health and the environment, the Commonwealth has launched the Environmental Results Program (ERP) — the first of its kind in the nation — designed to get government out of the business of telling companies *how* to achieve environmental standards.

The Environmental Results Program is designed to make it simpler, faster, and more flexible for business to comply with strict environmental standards. ERP replaces conventional permits with stringent industry-wide standards — backed by an annual certification at the highest corporate level that these and other applicable standards are being met.

### **Engineering Performance Instead of Permits**

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The  
New Generation  
of  
Environmental  
Protection

For the span of a generation, regulators across the country worked to achieve business and industry compliance with environmental standards by using a tool common to regulators nationwide: the environmental permit.

However, conventional environmental permits and standards can be technically complex, prescriptive, and fairly inaccessible to most corporate managers and the public. Not surprisingly, then, compliance problems — particularly at smaller companies — often begin when facility managers understand too little about environmental standards and what it takes to meet them. Moreover, once permits and standards are issued, there is no built-in regulatory mechanism to prompt periodic senior-management review of compliance with the rules.

Worse, this conventional command-and-control approach distracted regulators across the country from what should be their primary concern: what and how much pollution is discharged to air, water, and land.

While DEP directly regulates almost 10,000 companies through some 16,000 state permits, together those companies account for only a tiny fraction of the pollution generated statewide. The fact is that too many of DEP's limited resources are focused on relatively minor environmental impacts. Instead, DEP should be directing most of its resources at those companies and activities that most impact human health and the environment.

**“We are a business entrepreneur and an environmental advocate who believe it is possible, indeed imperative, to do a better job of protecting the environment, encouraging innovative solutions, and making our state more economically competitive.”**

***James R. Gomes, President  
Environmental League of Massachusetts***

***James M. Coull, Chairman,  
Environmental Affairs Committee,  
Massachusetts High Technology Council***

This frustrating reality prompted Massachusetts Department of Environmental Protection (DEP) staff in 1995 to begin looking at regulation from a radically new perspective: Why not take many of the requirements embedded in *individual* permits and convert them to comprehensive, industry-wide *performance standards* with which *all* facilities in a given industry sector or process can comply? And why not ensure better compliance by raising accountability for such standards to the highest corporate level?

The product of that thinking is the Environmental Results Program, an initiative toward better, less costly environmental protection that is redefining the way government regulates thousands of companies, by giving them flexibility to decide on the best, most cost-effective ways

to comply with the law. And every hour, every day spent reviewing project plans and writing such permits is time that cannot be devoted to the other side of the equation: inspections to ensure compliance and enforcement when violations are found.

Now, Massachusetts is turning the equation around. By freeing industries to certify annually that the way they engineer their own performance meets or exceeds environmental standards, the Environmental Results Program (ERP) will shift DEP's primary efforts from up-front plan reviews to more compliance and enforcement.

## **How ERP Works**

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First, in concert with representatives of affected industrial sectors and environmental advocates, DEP develops comprehensive *performance standards* designed to replace individual facility permits.

The agency then provides technical assistance to these industries with comprehensive, easy-to-read workbooks that outline ways to achieve — and even exceed — the standards, including measures to prevent pollution and reduce or eliminate the use of toxic chemicals.

When a company wants to start a new activity that otherwise would require a new permit or permit modification, that action triggers an initial certification, at the highest corporate level, that the activity is and will be in compliance with ERP performance standards. Annually thereafter, a top corporate officer will again certify compliance.

Clearer but no less stringent environmental standards — coupled with easily understood guidance from DEP on how to comply with the rules — should give companies the information they need to readily see what is expected of them. Moreover, facility managers will be well aware of their environmental obligations *before* they make decisions about

modifying equipment and operations, rather than at the end of a long, expensive permitting process.

High-level corporate responsibility for meeting environmental standards — and increased inspections by former DEP permit writers — is expected to improve compliance rates across the board while making DEP more efficient by requiring less DEP staff time spent on each facility.

The ERP approach, then, plays to the strength of government by enabling regulators to focus on what they do best: set clear standards and enforce them. At the same time, ERP plays to the strength of the private sector by freeing companies to decide on the best, most cost-effective means of meeting the standards.

## **Demonstration Companies Test the ERP Concept**

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Since early 1996, DEP has been working with a group of 18 companies to test the ERP concept. DEP, in cooperation with these companies and other constituents, developed environmental standards that replaced certain industrial permits and created a general compliance certification form. DEP conducted field inspections at participating businesses, both before and after the demonstration project began, to determine changes in compliance status as a result of ERP. The demonstration project indicated that:

- ERP can improve both industry compliance rates and DEP's ability to protect public health and the environment. The overall compliance rate of participating firms jumped dramatically, from 33 percent in the spring of 1996 to 78 percent one year later.
- By eliminating the need for businesses to obtain or modify permits, the ERP approach gave companies more flexibility to make process changes, thus reducing the "time to market" for new products.
- Fewer permit reviews should allow DEP to focus more effectively on auditing and inspecting facilities to ensure their compliance with environmental requirements.
- Developing exclusively performance-based environmental standards will present some challenges that DEP will address as it moves forward with the new approach.

## **The Future is Under Way**

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On July 1, 1997 DEP launched ERP facility-wide certifications for two industrial sectors, dry cleaners and photo processors — a total of about 1,550 companies. The shift to ERP for these two industrial sectors is expected to reduce wastewater discharges of silver from photo processors in the state by 99 percent, and to achieve a 43 percent reduction in emissions of perchloroethylene from dry cleaners.

Following photo processors and dry cleaners, DEP will roll out ERP to commercial printers in early 1998 and, by the end of that year, to companies that install new combustion sources or discharge industrial wastewater. By the close of 1998, almost 10,000 Massachusetts companies will have ushered in a new era of environmental regulation — facility-wide, performance-based certification.

## **Who Qualifies to Participate in ERP?**

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Eventually, DEP will be converting most "state-only" permits to certifications. A facility ultimately *will be included* in ERP if it is subject to *one or more* of the following permits and standards, provided the facility is neither subject to a federally-mandated permit nor considered a "noisome" facility:

- Plan approvals or performance specifications pursuant to air pollution regulations 310 CMR 7.02, 7.03, with emissions of more than one ton per year of volatile organic compounds (VOCs), particulate matter, or hazardous air pollutants;
- New source performance standards for air pollution;
- Reasonably available control technology (RACT) requirements for certain air pollutants, including VOCs and nitrous oxides (NOx);
- Maximum achievable control technology (MACT) standards for hazardous air pollutants;
- Industrial wastewater (IWW) and water pollution (WP) Sewer Connection Permits;
- IWW and WP Holding Tank Permits; *or*
- All Class A and some Class B Hazardous Waste Recycling Permits.

A facility is **currently excluded** from participating in ERP if it is subject to any of these federally mandated permits: Federal Air Quality Operating Permits; NPDES Surface Water Permits; Hazardous Waste Treatment, Storage, and Disposal Facility Licenses; *or* EPA Single Source SIP Revisions.

## **Some of the Individuals and Organizations Advising DEP**

*DEP started giving shape to the concept in mid-1995 when an ERP Design Group— representing environmental advocates, business and industry, consultants, and local, state, and federal government — began meeting with DEP staff to establish the framework of the program. Working together for more than a year, DEP and the panel developed the mechanism that now will focus Massachusetts on environmental results. Today, the Design Group continues to advise DEP on implementation of the program.*

*David Begelfer*  
National Association of Industrial and Office Properties

*William Guenther*  
Mass Insight

*Stig Bolgen and Mark Flannery*  
Printing Industries of New England

*Rick Mattila*  
Massachusetts Biotech Council; Genzyme Corp.

*James M. Coull*  
Massachusetts High Technology Council;  
J.M. Coull, Inc.

*Kevin McManus*  
Massachusetts Water Resources Authority

*Jane Downing and Tom D'Avanzo*  
U.S. Environmental Protection Agency, Region I

*Mike Moore*  
Massachusetts Environmental Health Association;  
Worcester Conservation Commission; Concord  
Board of Health

*Chris Ford*  
American Electroplating and Surface Finishing Society;  
Northeast Circuits Association; Printed Circuit Corp.

*John O'Hare and Mark Allain*  
Massachusetts Industrial Pretreatment Forum

*Larry Goldman*  
Smaller Business Association of New England;  
Goldman Environmental Consultants, Inc.

*Robert Ruddock*  
Associated Industries of Massachusetts

*James R. Gomes*  
Environmental League of Massachusetts

*Rusty Russell*  
Conservation Law Foundation

*Tim Greiner*  
Toxics Use Reduction Planner; Greiner Environmental

*Rob Sargent and Paul Burns*  
Massachusetts Public Interest Research Group

*Mary Griffiths*  
Massachusetts Attorney General's Office

*Lauren Stiller-Rikleen*  
Boston Bar Association; Bowditch & Dewey